



David R. Posteraro | Partner

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April 4, 2019

VIA EMAIL AND CERTIFIED MAIL [blizzarddeals@gmail.com]

Blizzard LLC  
Attn: David  
173 2<sup>nd</sup> Avenue  
Brooklyn, NY 11215

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**THIS LETTER CONTAINS A WRITTEN DEMAND THAT YOU CEASE CERTAIN UNLAWFUL ACTIVITIES. IF YOU DO NOT RESPOND TO THIS LETTER BY SIGNING AND RETURNING THE ENCLOSED MUTUAL SETTLEMENT, RELEASE AND WAIVER, A LAWSUIT WILL BE FILED AGAINST YOU. IF YOU ARE REPRESENTED BY LEGAL COUNSEL YOU SHOULD IMMEDIATELY FORWARD THIS LETTER TO THAT REPRESENTATIVE.**

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**Re: The NOCO Company  
Infringement of Intellectual Property and Other Rights**

Dear David:

We are legal counsel to The NOCO Company ("**NOCO**"), a leading designer, manufacturer and seller of quality batteries and related products.

In business for over eighty years, NOCO is recognized by consumers as a leader in the quality battery products industry. NOCO has used the trade name NOCO and the trademark NOCO® to identify its high quality batteries and related products. NOCO's continuous, widespread advertisement, use and promotion of the NOCO Trademark has come to symbolize invaluable goodwill. In addition, NOCO is the owner of multiple registered trademarks employing the word NOCO including the registered trademarks NOCO®, NOCO GENIUS®, NOCO GENIUS BOOST®, and others in connection with the sale of its products in retail stores, on-line, and on its website at: <https://no.co/> (the "**Trademarks**").

In addition, NOCO has developed and publishes content, including photographic images, in connection with its sale of products that are protected under United States and international law (the "**Copyrighted Images**").

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**KJK.COM**

CLEVELAND + COLUMBUS



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NOCO uses a network of authorized resellers to sell its products. NOCO only works with and sells to those resellers who, as authorized resellers, are permitted to use NOCO's Trademarks, Copyrighted Images, and other intellectual property in connection with the sale of NOCO products. These authorized resellers are contractually obligated to comply with NOCO policies and procedures including NOCO's resale policies. Moreover, only authorized resellers may extend the valuable consumer warranty protections offered by NOCO.

In addition, to protect consumers and authorized resellers, its valuable Trademarks, Copyrighted Images, intellectual property, brand reputation and goodwill, NOCO has implemented a Minimum Advertised Priced Policy (the "**MAP Policy**"). The MAP Policy can be found at <https://no.co/map-policy>. MAP Policy prices are enclosed and can be downloaded at <https://no.co/x/MAP>.

NOCO monitors both authorized resellers and unauthorized sellers for compliance with NOCO's policies, acceptable use of NOCO's Trademarks, Copyrighted Images, other intellectual property, and compliance with NOCO's warranty protections. This activity ensures that both authorized resellers and consumers are protected against unauthorized sales of NOCO products.

You are advertising NOCO products, infringing upon NOCO's Trademarks and Copyrighted Images, and in violation of the MAP Policy and NOCO's intellectual property and other rights. Evidence of that activity is set forth below:

**NOCO Boost Plus GB40 1000 Amp 12V UltraSafe Lithium Jump Starter**  
by NOCO  
3,669 customer reviews | 1000+ answered questions  
FREE One-Day Pickup. Details  
FREE Delivery by Monday. Details  
In Stock.  
Qty: 1

Buy New \$99.95  
Add to Cart  
Buy Now

Ships from and sold by Amazon.com. Gift-wrap available.

Deliver to Jonathan - Solon 44139  
Buy Used \$85.28

Add to List

Add to your Dash Buttons

Share

Other Sellers on Amazon  
\$99.83 + Free Shipping  
Sold by: Blizard LLC  
Add to Cart  
\$99.95  
Sold by: Central Texas Powerports  
\$99.95  
Add to Cart

Save on AmazonBasics and SupplyMaster Safety Gear

SupplyMaster Disposable Exam Nitrile Gloves, 400 pk \$21.87

AmazonBasics Blue Light Blocking Safety Glasses, 12pk \$54.99

AmazonBasics Noise Reduction Safety Earbuds \$9.34

You are hereby advised immediately and forever to cease selling any and all NOCO products and to sign the attached Mutual Settlement, Release and Waiver. Failure to return the Mutual Settlement, Release and Waiver within seven (7) days of this letter will result in a lawsuit being filed against you.



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**IMPORTANT**

If you wish to be allowed to sell NOCO products in the future, please be advised of the following:

1. Your request to continue to sell NOCO products must be sent via email to [bpg@kjk.com](mailto:bpg@kjk.com) or, if made in writing, sent to:

Brand Compliance Request  
c/o Kohrman Jackson & Krantz LLP  
1375 East Ninth Street  
One Cleveland Center  
29th Floor  
Cleveland, Ohio 44114  
Attn: Brand Compliance Administrator

2. You must provide proof that you have made all NOCO products offered for sale MAP compliant on each and every platform on which you offer such products. Failure to do so will result in the denial of your request and is non-negotiable; and
3. You must agree to abide by MAP in the future and comply with all other NOCO policies applicable to resellers of NOCO brand products.

**THIS CORRESPONDENCE DOES NOT PURPORT TO BE A COMPLETE STATEMENT OF THE LAW, THE FACTS, OUR CLIENT'S RIGHTS OR POTENTIAL CLAIMS AND IS WITHOUT PREJUDICE TO THEIR LEGAL AND EQUITABLE RIGHTS, ALL OF WHICH ARE EXPRESSLY RESERVED.**

If you have any questions, please contact the undersigned or Sean Malone of our office at (216) 736-7237 or at [spm@kjk.com](mailto:spm@kjk.com).

Sincerely,

A handwritten signature in blue ink that reads 'David R. Posteraro'.

David R. Posteraro

Enclosure

Copy: Sean P. Malone



### AGREEMENT IN SETTLEMENT, RELEASE AND WAIVER (RESALE PROHIBITED)

This AGREEMENT is made by and among: (i) The NOCO Company ("**NOCO**"); and (ii) the individual/entity identified below, the individual executing this AGREEMENT, and their respective owners, members, shareholders, directors, officers, employees, agents, successors, assigns, parents, subsidiaries, affiliates, and related entities ("**SELLER**"). NOCO and SELLER are collectively referred to as the "**PARTIES**" and individually as a "**PARTY**".

Name (Exact Legal Name)		Type of Entity (individual, corporation, etc.)	
Street Address	City	State	Zip Code
Telephone		Fax Number	
Contact Name		Email	
Business ID No.	Website Address	Effective Date	

**1. Background.** NOCO designs, manufactures, and sells products ("**PRODUCTS**") under the NOCO® and other registered and unregistered trademarks which PRODUCTS embody substantial proprietary intellectual property ("**NOCO IP**"). SELLER, who is not an authorized reseller, has listed PRODUCTS for sale and infringed upon the NOCO IP. In exchange for the covenants set forth herein, NOCO will not pursue legal action for SELLER's past infringement.

**2. Non-Sale of PRODUCTS.** SELLER agrees that it shall forever refrain from directly or indirectly selling any PRODUCTS or using any NOCO IP. If SELLER breaches this AGREEMENT, including by listing any PRODUCTS for sale on any website or other platform, including but not limited to Amazon.com, eBay, or other platform, in violation of NOCO's MAP or other terms and conditions of sale, SELLER shall reimburse NOCO for NOCO's costs to enforce this AGREEMENT, including, but not limited to, reasonable attorney fees and costs incurred.

**3. Source of Supply.** Contemporaneously with the execution of this AGREEMENT, SELLER shall provide to NOCO the names and addresses of all of SELLER's sources of supply of any and all PRODUCTS sold, or offered for sale, by SELLER.

**4. Mutual Release of All Claims.** The PARTIES hereby acquit, release and forever discharge each other from, and waive any and all claims, actions, causes of action, demands, rights, damages, costs, interest, punitive damages, exemplary damages, equitable relief, attorney fees, expenses and compensation that they, either jointly or severally, may now have for economic damage, infringement of intellectual property rights, breach of contract, tortious interference, negligence, and any other suits or claims for damages, whatsoever, at law or in equity, that either PARTY had, has, or

possibly could have had with respect to the PRODUCTS and/or to SELLER'S sale of the PRODUCTS.

**5. Governing Law.** The laws of Ohio govern this AGREEMENT; any action to construe or enforce it may only be filed in Cuyahoga County, Ohio; and any objection to such forum is hereby waived.

**6. Damages and Forfeiture.** If the SELLER directly or indirectly sells any PRODUCTS or uses any NOCO IP in commerce in violation of this AGREEMENT, the SELLER agrees to surrender to NOCO all proceeds from its infringing sales. SELLER gives consent to third parties to effectuate the transfer of said proceeds from SELLER's account to NOCO. The PARTIES agree that the harm caused by SELLER's breach would be difficult or impossible to accurately estimate, and that these damages are not a penalty, but are a reasonable estimation of the anticipated or actual harm that might arise from SELLER's breach.

**7. Miscellaneous.** The PARTIES (i) have fully read this AGREEMENT; (ii) understand all of its terms; (iii) have had the opportunity to consult legal counsel; (iv) have the authority to execute it; and (v) do so voluntarily. This is the entire agreement among the PARTIES; supersedes any and all prior agreements; has been prepared jointly by them; and shall be interpreted according to the rules of interpretation for arm's length agreements. If any term is held void or invalid, all other terms shall remain valid and fully enforceable. This AGREEMENT may be executed in counterparts and is effective when counterparts have been signed, it being understood that the PARTIES need not sign the same counterpart. Faxed or electronically mailed counterparts shall be deemed to be originals; digital signatures shall have the same force and effect as a signature in pen and ink.

#### THE NOCO COMPANY

By: \_\_\_\_\_  
Jonathan Nook, President

Date: \_\_\_\_\_

#### "SELLER"

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_